

Application No. 09/965765
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Amendment
Attorney Docket No. S63.2B-10002-US01

REMARKS

This Amendment is in response to the Office Action dated July 8, 2003 wherein affirmation of the provisional species election of June 19, 2003, wherein claims 5-9, 12-14, 16, 18, 20 and 27 were withdrawn was required. In the Office Action claim 1 was objected to and claims 1-4, 10, 11, 15, 17, 19, 21-26 and 28-34 were rejected for the reasons discussed below.

The specific objections/rejections to the claims are addressed in the following paragraphs, which have paragraph numbers and headings corresponding to those in the Office Action.

Election/Restrictions

(1-4)

In the Office Action affirmation of the provisional species election of June 19, 2003 was required. In the provisional election Applicants had elected the species shown in FIGs 3 and 12 which corresponded to claims 1-4, 10, 11, 15, 17, 19, 21-26 and 28-34. Applicants traversed however on the grounds that claims 1, 2, 10, 17 and 28-34 are generic to all species. The Office Action identifies claims 1, 2, 10, 17 and 28-34 as being claims generic to all species. As such Applicants hereby affirm the election with traverse.

Information Disclosure Statement

(5)

In the Office Action the supplemental IDS of October 29, 2002 was said to fail to comply with 37 CFR 1.98(a)(1) and thus the information enclosed therein was not considered. More specifically the Office Action indicates that the noncompliance was as a result of a copy of file number S63.2-10010 being submitted with the IDS. Applicant notes that the S63.2-10010 is not prior art to the present Application. Applicants have included a second supplemental IDS in accordance with 37 CFR 1.98(a)(1).

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Claim Objections

(6)

In the Office Action claim 1 was objected to. As indicated above, the phrase "at one stripe material" has been corrected to properly state: "at least one stripe material".

Claim Rejections – 35 USC §112

(8-9)

In the Office Action claim 17 was rejected under 35 U.S.C. §112, second paragraph as being indefinite, and more specifically, the claim was said to have insufficient basis for the phrase "at least one sleeve". The rejection is rendered moot however, in light of the cancellation of claim 17 as indicated above.

Claim Rejections – 35 USC §102

(11)

In the Office Action claims 1-4, 10, 11, 15, 17, 19, 21, 28, 29, 32 and 34 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. 5,976,120 to Chow et al (Chow).

In response, Applicants note that Chow fails to teach a catheter having all of the elements of the instant claims.

Independent claim 1 as recited above has been amended to include the elements of dependent claims 24-26. Instant claims 1 as amended above require that the distal tip of the catheter include an inner matrix layer and an outer matrix layer with the at least one stripe positioned between the two layers.

Independent claim 34 as amended describes a tubular member having at least two matrix layers with the at least one stripe positioned between two of the layers.

Chow fails to describe a catheter having all of the elements of instant claim 1 or a tubular member having all of the elements of instant claim 34. As a result, the rejection is respectfully overcome.

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(12)

In the Office Action claims 1, 5, 9, 10, 12, 15, 21-26, 32, 22 and 34 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. 6,159,187 to Park et al (Park).

In response, Applicants note that Park fails to teach a catheter having all of the elements of the instant claims.

In addition to those amendments discussed above, independent claim 1 has been amended to also include the elements of dependent claim 3. As such, independent claim 1 describes a catheter having a distal tip wherein the at least one stripe is substantially parallel to the longitudinal axis of the distal tip. Park fails to describe a catheter having at least one stripe substantially parallel to the longitudinal axis of the distal tip.

In addition to those amendments discussed above, Independent claim 34 has also been amended to describe the at least one stripe as being substantially parallel to a longitudinal axis of the tubular member.

Park fails to describe a catheter having all of the elements of instant claim 1 or a tubular member having all of the elements of instant claim 34. As a result, the rejection is respectfully overcome.

Claim Rejections – 35 USC §103

(14)

In the Office Action claims 30 and 31 were rejected under 35 U.S.C. §103(a) as being obvious over Chow in view of Park. More specifically, the Office Action asserts that it would have been a matter of design choice to change the hardness of material to suit the needs of a particular surgical procedure.

While Applicants respectfully disagree with this assertion, it is nonetheless rendered moot, as neither of the cited references, alone or in combination, teach or suggest all of the elements of instant claim 1 from which claims 30 and 31 depend. In light of the failure of Chow and/or Park to teach or suggest all of the elements of independent claim 1, as well as those claims depending therefrom, the rejection is respectfully overcome.

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CONCLUSION

In view of the foregoing it is believed that the present application, with claims 1, 2, 4, 10, 15, 19, 22 and 28-34 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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